

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

3 UNITED STATES OF AMERICA,)
4 Plaintiff,)
5 v.) CRIMINAL ACTION
6 JUBAR AHMAD,) 1:11-cr-554
7 Defendant.)
_____)

REPORTER'S TRANSCRIPT

CHANGE OF PLEA HEARING

Friday, December 2, 2011

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16

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— — —

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3 WITNESS: EXAMINATION BY THE COURT:

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5 Jubair Ahmad

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1 THE CLERK: Case number 11-CR-554, United
2 States of America versus Jubair Ahmad.

3 THE COURT: All right.

4 Who is here on behalf of the government.

5 ATTORNEY CAMPBELL: Good afternoon, your
6 Honor. Stephen Campbell and John Gibbs on behalf of the
7 United States.

8 THE COURT: All right.

9 And who is here for the defendant.

10 ATTORNEY MIZER: Good afternoon, your Honor.
11 Bryan Mizer and Aamar Ahmad on behalf of Mr. Jubair
12 Ahmad.

13 THE COURT: All right.

14 Good afternoon to all of you. Good
15 afternoon, Mr. Ahmad.

16 DEFENDANT AHMAD: Good afternoon.

17 THE COURT: All right.

18 You may be seated.

19 Ms. Ahmad, let's just take care of this
20 right off the bat. You're not related in any way to the
21 defendant, are you?

22 ATTORNEY AHMAD: No, your Honor.

23 THE COURT: I did not think so. All right.

24 It's a bit like Smith, Jones and other things.

25 ATTORNEY AHMAD: It is probably more common

1 than that, your Honor.

2 THE COURT: Well -- and like Nguyen in the
3 Vietnamese community, but Smith and Jones -- and when I
4 went to England, now it seems a hundred years ago, in
5 certain parts of England, Ellis was pretty common. So
6 there can be that, but we are clear on this record that
7 the defendant, Mr. Ahmad, is not related to Ms. Ahmad,
8 his counsel. All right.

9 I have these papers and, Mr. Campbell, are
10 these essentially identical to the papers earlier
11 provided to chambers?

12 ATTORNEY CAMPBELL: Yes, your Honor.

13 THE COURT: And, Mr. Mizer, I take it you
14 and Ms. Ahmad have had an adequate opportunity to review
15 these papers with your client.

16 ATTORNEY MIZER: Yes, your Honor.

17 THE COURT: All right.

18 Mr. Ahmad, come to the podium, please, sir.

19 THE WITNESS: (Complied).

20 THE COURT: Mr. Ahmad -- administrator the
21 oath to the defendant, please.

22 (Defendant sworn by clerk).

23 (JUBAIR AHMAD, after having been first duly
24 sworn by the deputy clerk, testified as follows:)

25 EXAMINATION

1 BY THE COURT:

2 Q. Mr. Ahmad, do you understand, sir, that you are
3 now under now under and if you answer any of the Court's
4 questions falsely, you may be prosecuted for perjury or
5 for making a false statement?

6 A. Yes, sir.

7 Q. Mr. Ahmad, there are three reasons why the Court
8 will ask you a series of questions, and it's important
9 that you understand what those three reasons are.

10 First, the Court will ask you a series of
11 questions to determine from your answers whether your
12 waiver of your right to compel the government to proceed
13 by way of a grand jury indictment on this felony charge
14 against you is a knowing and a voluntary waiver, that
15 is, that you understand all that that right entails and
16 nonetheless wish to give it up freely, willingly and
17 voluntarily.

18 Second, the Court will ask you a series of
19 questions to determine from your answers whether your
20 plea of guilty itself to this charge is knowing and
21 voluntary; that is, that you understand the nature of
22 the charge, that you understand all the possible
23 consequences or punishments that may result from your
24 plea of guilty to this charge, and that you understand
25 all the rights that you'll be giving up by pleading

1 guilty to this charge, and understanding all of that,
2 still wish to plead guilty freely, willingly and
3 voluntarily.

4 And finally, Mr. Ahmad --

5 **A.** Yes, sir.

6 **Q.** The Court will ask you a series of questions to
7 determine from your answers whether there is a factual
8 basis for your plea of guilty, that is, that you
9 actually did what are you pleading guilty to because in
10 this court, you may not plead guilty to something you
11 did not do.

12 Now, do you understand those as the three
13 reasons the Court will ask you a series of questions?

14 **A.** Yes, sir.

15 **Q.** All right. State your full name.

16 **A.** Excuses me? Jubair Ahmad.

17 **Q.** All right. Would you spell that for the court
18 reporter, please?

19 **A.** J-u-b-a-i-r, A-h-m-a-d.

20 **Q.** And how old are you, Mr. Ahmad?

21 **A.** I am 24.

22 **Q.** And where were you born, sir?

23 **A.** Pakistan.

24 **Q.** And are you a citizen of Pakistan?

25 **A.** Yes.

1 Q. What is your current immigration status in this
2 country?

3 A. I am lawful permanent resident.

4 Q. You are a permanent resident?

5 A. Yes.

6 Q. All right, sir.

7 THE COURT: And, Ms. Ahmad, I hope you won't
8 mind my saying this, but it's all right with the Court
9 if you sit down.

10 ATTORNEY AHMAD: Thank you, your Honor. I
11 thank you.

16 ATTORNEY AHMAD: Thank you.

17 THE COURT: All right.

18 BY THE COURT:

19 Q. Now, what school -- did you attend school in
20 Pakistan?

21 A. Yes, I have high school from there.

22 Q. And is that after 12 years of study?

23 A. No, that is actually 12 years.

24 Q. That is actually?

25 A. Twelve years of school.

1 Q. Yes, 12 years of school you received a high school
2 degree --

3 A. Yes.

4 Q. -- a diploma?

5 A. Yes.

6 Q. Have you attended college or university?

7 A. I -- no, I did not.

8 Q. And in school in Pakistan I take it that is not
9 conducted in English but in Urdu?

10 A. Yes, it's in Urdu.

11 Q. And where did you learn your English?

12 **A.** From here.

13 Q. Because it's quite good. How long have you been
14 in the United States?

15 A. For five years.

16 Q. Did you study English in Pakistan?

17 A. Little bit in school, yes, a little bit, a little
18 bit grammar and about tenses, that is all we study
19 there.

20 THE COURT: Mr. Mizer, have you and you
21 Ms. Ahmad had any difficulty communicating with your
22 client in English?

23 ATTORNEY MIZER: No, your Honor, we haven't.

24 THE COURT: Have you used or found the need
25 to use an interpreter?

1 ATTORNEY MIZER: No, your Honor.

2 THE COURT: All right. Well, I will note
3 that I think his English appears to be quite good, and
4 he has never formally studied it.

5 BY THE COURT:

6 Q. But it appears, Mr. Ahmad, your English is -- is
7 excellent.

8 A. Right.

9 Q. Either you studied if hard or watched a lot of
10 television, one of the two.

11 A. I spend my time on Internet, actually. That is
12 why.

13 Q. All right. Well, that may be another means?

14 A. I have been working with Americans to help to
15 speak English. That is why.

16 Q. All right. Well, I am going to ask you next what
17 jobs have you held in the last three years?

18 A. Well, I was an electrician.

19 Q. Electrician?

20 A. Yes.

21 Q. And where did you work?

22 A. There is a company in Leesberg, TMC Electric. I
23 was working for them.

24 Q. And what did you do as an electrician?

25 A. Electrical work, commercial work.

1 **Q.** And wiring and that sort of thing?

2 **A.** Yes, all kinds of electric work.

3 **Q.** And did you have to read in English plans and
4 directions?

5 **A.** Yes. Yes. I mean, most likely there are symbols
6 on the plans. So, we have to memorize them.

7 **Q.** Do you have any difficulty reading or writing
8 English?

9 **A.** No, not really.

10 **Q.** Do you have any difficulty understanding English?

11 **A.** No, I understand English.

12 **Q.** Now, tell me again your age, sir.

13 **A.** 24.

14 **Q.** Have you ever been treated for mental illness or
15 addiction to narcotic drugs of any kind?

16 **A.** No.

17 **Q.** Have you ever been treated for alcohol abuse?

18 **A.** No, sir.

19 **Q.** Are you currently under the care of any physician
20 or psychiatrist or psychologist for any condition?

21 **A.** No, sir.

22 **Q.** Are you currently taking any drug or medication,
23 whether prescribed by a physician or otherwise?

24 **A.** No, sir.

25 **Q.** Is there any reason today, Mr. Ahmad, why you

1 would be unable to understand what's happening in this
2 proceeding today?

3 **A.** Nope, I am good.

4 **Q.** You feel all right today?

5 **A.** Yes, sir.

6 **Q.** You feel as though you can make decisions about
7 your future today?

8 **A.** Yes, sir.

9 **Q.** Have you been furnished with a copy of the
10 criminal information that is the U.S. Attorney's charge
11 against you in this case?

12 **A.** Yes, sir I did.

13 **Q.** Have you read it?

14 **A.** Yes, yes, sir.

15 **Q.** All right. Just for purposes of this record,
16 would you read what the charge against you where it
17 begins, "From, on or about," would you read that allowed
18 please?

19 **A.** (Complied). "From on or about September 25, 2010
20 to on or about October 16, 2010, in the Eastern District
21 of Virginia and elsewhere, defendant, Jubair Ahmad, did
22 unlawfully, knowingly and willfully provide material
23 support to a designated foreign terrorist organization,
24 LeT, in that he produced and uploaded a video intended
25 to glorify violent Jihad rage by LeT and to recruit

1 others to join LeT."

2 Q. All right.

3 THE COURT: And I take that, for purposes of
4 the record, should confirm that Mr. Ahmad is -- has --
5 is literate in English. He understands, speaks English
6 and reads English.

7 BY THE COURT:

8 Q. Now, Mr. Ahmad, this charge against you, namely
9 the charge of providing material support to a designated
10 foreign terrorist organization, LeT; that is a serious
11 felony charge, and ordinarily the government could not
12 proceed against you on such a charge without first
13 obtaining a an indictment, that is, an accusation
14 against you by a grand jury. Do you understand that?

15 A. Yes, sir.

16 Q. And have you discuss that had right to compel the
17 government to proceed by way of a grand jury indictment
18 with your counsel?

19 A. Yes, sir, I did.

20 Q. And do you understand that a grand jury is
21 composed of at least 16 persons and not more than 23;
22 and if you insisted on having the government proceed by
23 way of a grand jury indictment, then the government
24 would have to present evidence to a grand jury, and at
25 least 12 members of the grand jury would have to

1 conclude that there was probable cause to believe, that
2 means more likely true than not true, that this offense
3 occurred and that you committed it.

4 And here this afternoon we don't know
5 whether a grand jury would or would not indict you; do
6 you understand that?

7 **A.** Yes, sir.

8 **Q.** Do you also understand that if you waive, if you
9 give up your right to compel the government to proceed
10 in that fashion then the government won't have to
11 present any evidence to a grand jury and seek an
12 indictment, but instead will be able to proceed against
13 you solely on the basis of the criminal information. Do
14 you understand that?

15 **A.** Yes, sir.

16 **Q.** Do you wish to -- and have you discussed that with
17 your counsel?

18 **A.** Yes, sir, I did.

19 **Q.** And are you fully satisfied with the advice and
20 counsel Mr. Mizer and Ms. Ahmad have provided to you?

21 **A.** Yes, sir.

22 **Q.** All right. Do you wish to waive your right to
23 compel the government to proceed by way of a grand jury
24 indictment on this charge against you?

25 **A.** Yes, sir, I do.

1 Q. All right.

2 THE COURT: The Court in the case of United
3 States against Jubair Ahmad finds that the defendant is
4 fully competent and capable of waiving his right to
5 compel the government to proceed by way of a grand jury
6 indictment and that that waiver is knowing and
7 voluntary. He may now execute that form, the waiver
8 form, in open court, and I will endorse it.

9 THE WITNESS: (Complied).

10 BY THE COURT:

11 Q. Now, Mr. Ahmad, it is important that you
12 understand all the possible consequences that may occur
13 to you as a result of your plea of guilty. So I am
14 going to list those for you now.

15 First, you could be sentenced to a term of
16 imprisonment of up to 15 years. Fifteen years without
17 parole is the worst that could happen to you in this
18 case. You could be required to do pay a \$250,000
19 punitive fine. You will be required to pay \$100 special
20 assessment. You could be required to serve three years
21 of supervised release, and if in the course of that
22 supervised release you were to violate any of the
23 conditions of that supervised release, you could be
24 returned to prison for the full supervised release
25 period. And, finally, as a result of your plea, you may

1 be removed or deported from this country to your country
2 of origin.

3 Do you understand that all of those are
4 possible consequence of your plea of guilty in this
5 case?

6 A. Yes, sir, I do.

7 Q. Mr. Ahmad, you have a plea agreement and a
8 statement of facts which it appears that you have
9 signed. I want the court security officer, Mr. Wood, to
10 hand you what appear to be your plea agreement and
11 statement of facts. I want you to look at those and
12 tell me whether they are your plea agreement and
13 statement of facts.

14 **A.** (Complied) .

15 Q. Is that your plea agreement, Mr. Ahmad?

16 A. Yes, sir.

17 Q. Is that your signature that appears at the end of
18 that agreement?

19 A. Yes, sir.

20 Q. Does your signature appearing at the end of that
21 agreement mean you have read, understood and agreed to
22 the terms and conditions of the plea agreement?

23 A. Yes, sir.

24 Q. All right. And is that your statement of facts?

25 A. Yes, sir.

1 **Q.** And is that your signature that appears at the end
2 of that document?

3 **A.** Yes, sir.

4 **Q.** And does your signature appearing at the end of
5 that document mean that you have read the statement of
6 facts and agreed that it is true and accurate in all
7 respects?

8 **A.** Yes, sir.

9 **Q.** All right. Now, I am going to summarize the
10 essential terms of your plea agreement with the
11 government. Pay very careful attention to my summary,
12 Mr. Ahmad, because at the conclusion -- at the
13 conclusion I will ask you whether those are the terms of
14 your plea agreement with the government as you
15 understand it.

16 **A.** Right.

17 **Q.** Under the plea agreement, Mr. Ahmad, you've agreed
18 to waive indictment and plead guilty to the single count
19 information charging you with providing material support
20 to a designated foreign terrorist organization LeT.

21 And the plea agreement then recites, as I
22 just did, what the maximum penalties are for that
23 offense: 15 years in prison, a fine of up to \$250,000,
24 a special assessment of \$100 that in your plea agreement
25 you've agreed to pay prior to sentencing, and three

1 years of supervised release to follow any period of
2 incarceration? And the plea agreement notes, as I did,
3 that if you were to violate any of those conditions of
4 supervised release you could be returned to prison for
5 the full supervised release term.

6 The plea agreement goes on to provide that
7 you are representing in the plea agreement that you are
8 pleading guilty because you are in fact guilty of the
9 charged offense, that you admit the facts set forth in
10 the statement of facts filed with this plea agreement.
11 You agree that those facts establish your guilt of the
12 charged offense beyond a reasonable doubt, and that you
13 understand that the statement of facts will be the basis
14 for the calculation of your advisory sentencing
15 guidelines range.

16 The plea agreement continues, Mr. Ahmad, and
17 provides that you are representing to the Court, you are
18 stating that you are satisfied that your attorneys have
19 rendered effective assistance to you in this case and
20 that you understand that by entering into the plea
21 agreement and pleading guilty you will be giving up your
22 right to a jury trial. And then the plea agreement sets
23 out very briefly what those rights are that you have in
24 connection with the jury trial, and I'll review those
25 with you in greater detail in a few minutes.

1 The plea agreement continues, Mr. Ahmad, and
2 provides that you understand that the Court has the
3 jurisdiction, that means the power, to impose any
4 sentence on you up to the 15 years statutory maximum and
5 that your sentence hasn't yet been determined. It's
6 uncertain at this time what sentence you will actually
7 receive. Any estimate you've received from Mr. Mizer or
8 Mr. Ahmad or from the government or indeed from anyone,
9 those are merely estimates. They are not promises.
10 They are not assurances. Indeed, in the plea agreement
11 the government specifically notes that it makes no
12 promise or representation to you concerning what
13 sentence you will actually receive.

14 And the plea agreement also notes that the
15 sentencing guidelines, which once were mandatory, are
16 now merely advisory. They are only one factor for the
17 Court to take into account in imposing an appropriate
18 sentence. Now, in the plea agreement you and the
19 government have entered into an agreement as to how some
20 of the guidelines may apply to your case. That
21 agreement binds you, it binds the government, it does
22 not bind the Court. I could reach a different result.

Now, this agreement is that your base offense level should be 26 and that a terrorism enhancement of 12 points raises it to 38, and is that

1 the criminal history Category 6 is 6 in accordance with
2 Section 3A1.4. And then the plea agreement provides
3 that if you qualify for acceptance of responsibility
4 credit, two levels, the government has agreed to file a
5 motion for an additional level of credit because of your
6 timely plea and cooperation.

7 Now, the plea agreement goes on to provide
8 that in the face of the uncertainty over what sentence
9 you will actually receive you have nonetheless agreed in
10 the plea agreement to waive your right to appeal the
11 sentence, and you waive that right in any ground. The
12 only ground you don't waive it on is if I were to impose
13 a sentence beyond the 15 years, which I don't have the
14 power to do. That would be illegal, and you would never
15 waive that right because it has hasn't occurred yet, and
16 it won't occur.

17 The plea agreement goes on to provide that
18 payment -- that any monetary penalty the Court imposes
19 would be due and payable immediately. If I set a
20 schedule of payment that's merely a minimum means of
21 collecting the penalty. The court -- the government
22 could proceed to obtain and judgment and execute on the
23 judgment immediately.

24 You've also agreed to participate in a
25 financial responsibility program regardless of whether

1 the court orders it.

2 The plea agreement also provides that in --
3 that in return for your plea the government has agreed
4 not to prosecute you further in the Eastern District of
5 Virginia for the specific conduct described in the
6 information or statement of facts. The only exception
7 to that is in the event that the government prosecutes
8 you for committing a crime of violence or engaging in a
9 crime of violence or aiding and abetting or conspiring
10 to commit a crime of violence. In that event, the
11 government could allege and prove the conduct described
12 in the information or statement of facts.

13 The plea agreement continues, Mr. Ahmad, and
14 provides that you have agreed to cooperate with the
15 government fully and truthfully and to provide the
16 government with all information you have concerning any
17 criminal activity. In other words, you have agreed to
18 give the government any information you have concerning
19 any criminal activity, not just that that is in the
20 information or statement of facts, but if you know about
21 any criminal activity you are obligating yourself in the
22 plea agreement to disclose that to the government.

23 Now, specifically in connection with your
24 obligation to cooperate, Mr. Ahmad, you've agreed to do
25 the following: First, you've agreed to testify

1 truthfully and completely at any grand jury's trials or
2 other proceedings. You've agreed to be reasonably
3 available for debriefings and pretrial conference that
4 may be required by the government.

5 You've also agreed to provide the government
6 with any documents or other materials that may be in
7 your care, custody or control relating in any way to the
8 matters under investigation. You've also agreed to
9 submit voluntarily to a polygraph examination. That's a
10 lie detector test to be conducted by an examiner of the
11 government's choice.

12 You have also agreed that the statement of
13 facts that you have signed and made a part of the plea
14 agreement is limited to facts necessary to support the
15 plea and that you will provide additional details in the
16 course of your cooperation.

17 And the plea agreement also notes that
18 simply because you have agreed to cooperate, that does
19 not entitle you to violate any state, local or federal
20 law. Your cooperation, agreement to cooperate does not
21 entitle you to violate any state, local or federal law.
22 And the plea agreement also notes that while you are
23 obligated to cooperate with the government, the
24 government isn't obligated to seek your cooperation.

25 Now, the plea agreement continues and

1 provides that the government will not use any truthful
2 information you provide in connection with your
3 cooperation to prosecute you further unless there is a
4 crime of violence, as I indicated earlier, that is
5 alleged in the future. Now, what that means is that if
6 you are honest, if you are truthful in your cooperation
7 with the government, the government will not use that
8 truthful information to enhance your guidelines range.
9 The only exception again is that if the government later
10 alleges a crime of violence against you.

11 Now, if, however, you should knowingly
12 provide false, misleading or incomplete information, in
13 other words, if you are not truthful with the
14 government, then the government may seek to be released
15 from its obligations under the plea agreement.

16 And if the government is released by the
17 court from its obligations then the government would be
18 free to prosecute you for any offense it knows about,
19 and in doing so it would be able to use against you all
20 of the information it's obtained from you including the
21 statement of facts that you've submitted, and you would
22 not be able to rely on any statute, rule or
23 constitutional provision to suppress the information,
24 the use of that information against you.

25 The plea agreement continues, Mr. Ahmad, and

1 provides that the U.S. Attorney's Office for the Eastern
2 District of Virginia will not contact any other state or
3 federal prosecuting jurisdiction and voluntarily turn
4 over truthful information. And if any other prosecutor
5 attempts to use truthful information that you have
6 provided pursuant to the agreement, then the government
7 agrees, the Eastern District of Virginia prosecutor
8 degrees upon request to contact that jurisdiction and
9 request that it abide by the immunity provision of the
10 plea agreement. But every prosecutor, as the agreement
11 reflects, retains a jurisdiction over whether to use
12 such information.

13 Now, the plea agreement continues, Mr.
14 Ahmad, and provides that in order for you to satisfy
15 your cooperation obligation it isn't necessary that
16 someone be caught and prosecuted and convicted on the
17 basis of information you provide. All that's necessary
18 in order for you to satisfy that cooperation obligation
19 is for you to provide full, complete, and truthful
20 cooperation.

21 The plea agreement continues, Mr. Ahmad, and
22 provides that you and the government have agreed,
23 indeed, as the law provides, that it is within the
24 government's sole discretion whether to seek a downward
25 departure in your guidelines or reduction of your

1 sentence based on your cooperation.

2 Now, what that means, Mr. Ahmad, is this:

3 If you cooperate with the government, as you are
4 obligated to do and you provide the government with
5 information that in your opinion should be very valuable
6 to the government and should be of such usefulness to
7 the government so as to entitle you, as you see it, to a
8 motion for a downward departure in your guidelines or
9 reduction of your sentence, but the government disagrees
10 with your assessment of the value of the information,
11 perhaps because they already had it or they don't
12 consider it reliable or because it isn't very
13 significant, you cannot in those circumstances force the
14 government to bring the motion because that
15 determination as to how substantial your assistance has
16 been is solely within the government's discretion.

17 However, the exception to that is if the
18 government were to withhold a motion for a downward
19 departure reduction of sentence based on some bad faith
20 or unconstitutional reason such as discrimination on the
21 reason of basis of race, gender, religion or national
22 origin.

23 Now, the plea agreement continues and notes
24 that you understand that pleading guilty to this offense
25 may have consequences with regard to your immigration

1 status. In other words, it may result in your being
2 removed or deported from this country. And, indeed, you
3 knowledge in the plea agreement that you are removable,
4 and you agree not to contest any removal proceedings
5 brought against you by Department of Homeland Security.

6 And you agree to request an expedited
7 removal hearing and consent to removal, and you
8 knowingly waive all rights to appeal, reopen, reconsider
9 and otherwise challenge the removal. And you agree to
10 waive all your rights, including rights to voluntary
11 departure, asylum, withholding of deportation or
12 removal, cancellation of removal, suspension of
13 deportation, adjustment of status and protection under
14 Article III of the convention against torture.

15 And you specifically acknowledge that you
16 have not be persecuted and have no present fear of
17 persecution in Pakistan on account of race, religion,
18 nationality or membership in a particular social or
19 political opinion. And you also acknowledge that have
20 you have never been tortured in and have no present fear
21 of torture in Pakistan.

22 Now, the only exception to your waiver of
23 all those rights is that nothing in the plea agreement
24 prohibits you from seeking a remedy for facts arising
25 after today. In other words, if for some reason after

1 today you became the subject of likely torture in
2 Pakistan, you could raise that, but it would have to be
3 on facts and circumstances arising after today.

4 The plea agreement continues and provides
5 that you have agreed to abandon any application for
6 existing immigration benefits. And you have agreed to
7 cooperate to effect your prompt removal by obtaining
8 travel documents and like and that this plea agreement
9 is binding for purposes of your removal proceeding.

10 And the plea agreement provides that if
11 there is a motion for a breach of the agreement either
12 by you or by the government, the Court will hold a
13 hearing and the party alleging the breach of the plea
14 agreement will have the burden of proving the breach by
15 a preponderance of the evidence. And, finally, the plea
16 agreement provides that it's the full and complete
17 agreement between you and the government and that there
18 aren't any other secret or side agreement.

19 Now, Mr. Ahmad, are those the terms of your
20 plea agreement with the government as you understand it?

21 **A.** Yes, sir, I do.

22 **Q.** Are all of the arrangements that you have, Mr.
23 Ahmad, with the government concerning your plea of
24 guilty to this charge contained in the plea agreement?

25 **A.** Excuse me. What did you say?

1 Q. Yes. Let me ask it again. Listen carefully.

4 **A.** Uhm-hmm.

5 Q. -- with the government concerning your plea of
6 guilty to this charge contained in the plea agreement?

7 A. Yes, sir, it is.

8 Q. Has anyone made any other or different kind of
9 promise or assurance to you of any kind whatsoever in an
10 effort to induce you to plea guilty?

11 A. No, sir.

12 Q. Anyone tried to force you or to pressure you or to
13 coerce you in any way to plead guilty in this case?

14 A. No, sir.

15 Q. Are you pleading guilty then freely and willingly
16 and voluntarily because you are, in fact, guilty?

17 A. Yes, sir.

18 Q. All right. Mr. Ahmad, you'll be sentenced under
19 the sentencing guidelines which once were mandatory and
20 are now advisory. Have you and Ms. Ahmad and Mr. Mizer
21 discussed how the sentencing guidelines might apply to
22 your case?

23 A. Yes, I will do.

24 Q. All right. You and the government have entered
25 into an agreement to make recommendations to the Court

1 as to how some of the sentencing guidelines might apply
2 to your case, you understand that that doesn't bind the
3 Court? I could reach a different result?

4 **A.** Yes, sir.

5 **Q.** And do you understand that the Court will not be
6 able to determine what advisory sentencing guideline
7 range applies to you until after the presentence
8 investigation report has been completed and you have had
9 a chance to review it and to review it with your counsel
10 and to call to the Court's attention any correction you
11 think should be made to the report and any objections
12 you have to it? You understand that?

13 **A.** Yes, sir.

14 **Q.** And do you understand that even after I determine
15 what guideline range applies to your case, that even
16 then the Court has the power, the authority to impose a
17 sentence that is either less severe than the guideline
18 range or more severe than the guideline range but never
19 greater than the 15-year statutory maximum?

20 **A.** Right. Yes, sir.

21 **Q.** Do you also understand that if you are sentenced
22 to a period of incarceration, you will not be paroled?
23 There is no parole in the federal system. It has been
24 abolished.

25 **A.** Yes, sir.

1 Q. Do you also understand that ordinarily under the
2 law you would have the right to appeal any sentence I
3 impose on you, but in your plea agreement you have
4 waived that right. You have given it up on any ground?

5 A. Yes, sir.

6 Q. Do you also understand, Mr. Ahmad, that if the
7 sentence you ultimately receive is more severe than the
8 sentence you now expect as you stand here this afternoon
9 you will still be bound by your plea agreement and plea
10 and you will have no right to withdraw them?

11 A. Yes, sir.

12 Q. Mr. Ahmad, you have an absolute right to plead not
13 guilty and to persist in that plea, and if you do so you
14 have the right to a trial by jury. Do you understand
15 that?

16 A. Yes, sir, I do.

17 Q. Now, incident to that trial by jury, Mr. Ahmad,
18 you have all of the following rights. This is where I
19 tell you what rights you have at a jury trial so that
20 you'll understand what it is you are giving up by
21 pleading guilty.

22 First, you have the right to the assistance
23 of your counsel, Ms. Ahmad and Mr. Mizer, throughout all
24 phases of the proceeding against you in this case.

25 Next, you have the right to strike ten

1 persons from the panel of perspective jurors for
2 whatever reason you choose, subject only to do the
3 constitutional constraint that neither you nor the
4 government may strike any perspective juror solely for
5 reasons of race or gender.

6 Next, you would have the right to see and
7 hear all witnesses and all evidence against you and have
8 those witnesses and that evidence cross-examined on your
9 behalf. In other words, you cannot be prosecuted on the
10 basis of secret testimony or secret evidence. You have
11 the right to see it all. You have the right to confront
12 it all. You have the right to have it all
13 cross-examined by your attorney.

14 Next, you would have the right to testify or
15 not to testify. You have an absolute right to testify.
16 You have a absolute right to decline to testify. Now,
17 if you elect to decline to testify then the Court will
18 instruct the jury that the jury may draw no inference
19 from your silence. Indeed, if you elect not to testify,
20 the Court will instruct the jury that when the jury
21 retires to deliberate on its verdict, it cannot even
22 discuss the fact that you have not testified because
23 your right to remain silent is absolute under the
24 Constitution and you may not be penalized for exercising
25 that right.

1 And your rights under the Constitution with
2 respect to a trial by jury exists whether you are a
3 citizen or not a citizen, whether you are legal or
4 illegal. It's a right you have.

5 Next, you would have the right not to be
6 found guilty unless all 12 members of the jury are
7 unanimous in concluding that the government has proved
8 beyond a reasonable doubt each and every element of the
9 offense charged against you. Next you would have the
10 right to the issuance of compulsory process and
11 subpoenas to compel the attendance of witnesses and
12 evidence to be presented in your behalf.

13 Now, do you understand, Mr. Ahmad, that all
14 of those are rights you would have if you persist in a
15 plea of not guilty as have you an absolute right to do
16 and insist on your right to trial by jury?

17 **A.** Yes, sir, I do.

18 Q. And do you understand that by pleading guilty you
19 give up all those rights and there will be no trial at
20 all?

21 A. Yes, sir.

22 Q. Further, Mr. Ahmad, do you understand that you
23 have an absolute right to plead not guilty and to
24 persist in that plea, and if you do so then the
25 government will have to prove beyond a reasonable doubt

1 all of the elements of this offense that you are charged
2 with? You understand that?

3 **A.** Yes, sir.

4 **Q.** Now, specifically, what that means, Mr. Ahmad, is
5 this: That if you persist in a plea of not guilty, as
6 you have an absolute right to do, the government would
7 have to prove all of the following: First, that this
8 offense occurred on or about September 25, 2010.

9 Now, the government doesn't have to prove
10 that the offense occurred on that specific or particular
11 date, nor does it have to prove that that's the only
12 date on which it occurred, but it does have to prove
13 that the offense occurred on a date reasonably near that
14 date. Next -- that is between September 25 and
15 October 16th. In other words, it doesn't have to prove
16 that the offense occurred solely between those two
17 specific dates. It does have to prove that the offense
18 occurred between dates reasonably near those dates.

19 Next, the government would have to prove
20 that some part of the offense conduct occurred in the
21 Eastern District of Virginia, which is a very large
22 area. It includes all of northern Virginia, all of
23 central Virginia, and all of tidewater Virginia.

24 Next, the government would have to prove
25 that you unlawfully, knowingly and willfully provided

1 material support to a designated foreign organization,
2 LeT. So the government would have to prove that the LeT
3 is a designated foreign terrorist organization. The
4 government would have to prove that you provided
5 material support to LeT. And material support means --
6 could mean anything from money to supplies to a wide
7 range of things.

8 THE COURT: In this case what was it, Mr. --

9 THE DEFENDANT: Video.

10 THE COURT: -- Campbell?

11 ATTORNEY CAMPBELL: Production and posting
12 of a video.

13 THE COURT: Right. All right.

14 BY THE COURT:

15 Q. All of that can be material support. And then the
16 government would have to prove, Mr. Ahmad, that you did
17 this unlawfully knowingly and willfully; that is, that
18 you didn't do it by mistake or inadvertence or
19 negligence, but that you did it deliberately knowing
20 that you were providing this material support to LeT.

21 Now, the law doesn't require the government
22 to prove that you knew that LeT was a designated
23 terrorist organization?

24 THE COURT: That is correct, isn't it,
25 Mr. Mizer?

1 ATTORNEY MIZER: Yes, your Honor.

2 BY THE COURT:

3 Q. So The government would have to prove all of that
4 that I have listed, Mr. Ahmad, beyond a reasonable doubt
5 if you persist in a plea of not guilty. Do you
6 understand that?

7 A. Yes, sir, I do.

8 Q. And do you understand that by pleading guilty you
9 give up the right compel the government to prove all of
10 that beyond a reasonable doubt?

11 A. Yes, sir.

12 Q. Did you do what's charged in the information, Mr.
13 Ahmad? That is, did you provide material support to
14 LeT?

15 A. Yes, sir, I did.

16 Q. Tell me in your own words, sir, what you did?

17 A. Well, he asked me to make the video, so I did it
18 for him and --

19 Q. Who is "him"?

20 A. Talha. He belongs to FIF.

21 Q. All right. Go on.

22 A. And I posted a video on YouTube. I knew this
23 video was going to be used for his organization to
24 promote Jihad.

25 Q. All right. And did you do this roughly during the

1 period September of 2010 through October of 2010.

2 **A.** Yes, sir.

3 **Q.** Where were you when you did it, Mr. Ahmad?

4 **A.** At my home.

5 **Q.** Which is located where?

6 **A.** Woodbridge.

7 **Q.** All right.

8 THE COURT: You may be seated now, Mr.

9 Ahmad.

10 Just a moment. Mr. Ahmad, would you return
11 for a moment, please.

12 BY THE COURT:

13 **Q.** Tell me who this person was you provided this
14 information to?

15 **A.** His name is Talha, Talha Saeed.

16 **Q.** And what did you understand he was associated
17 with?

18 **A.** FIF, Falah-i Insaniyat Foundation, that is what
19 the name of the organization.

20 **Q.** And tell me again what you understood that he was
21 going to use it for.

22 **A.** Use it for his organization to promote Jihad.

23 THE COURT: All right, sir.

24 You may be seated now.

25 Mr. Ahmad, I am going to have Mr. Campbell,

1 the prosecutor, now tell the Court what the government
2 would prove if this matter were to go to trial. Listen
3 very carefully to what he says because when he is
4 finished I am going ask you whether what he has said is
5 true and accurate in all respects.

6 All right. Mr. Campbell?

7 ATTORNEY CAMPBELL: Your Honor, had this
8 matter proceeded to trial the United States would have
9 proven the following facts beyond a reasonable doubt:
10 That Mr. Ahmad was born in 1987 in Sialkot, Pakistan and
11 resided in Pakistan until the age of 19.

12 After receiving a visa from the United
13 States Department of State he entered the United States
14 on or about February 19th, 2007. Since his arrival
15 Ahmad has resided in Woodbridge, Virginia.

16 Lashkar-e-tayyiba serves as the military arm
17 of the political movement Markaz Al-dawa Wal-Irshad.
18 The mission of Lashkar-e-tayyiba, or LeT, is to conduct
19 and promote violent Jihad against those considered to be
20 the enemies of Islam. The focus of LeT operations has
21 been attacks on the neighboring country of India, in
22 particular the disputed region of Kashmir between
23 Pakistan and India.

24 On or about December 24, 2001, the United
25 States Department of State designated LeT a foreign

1 terrorist organization after determining that LeT
2 committed or posed a significant risk of committing acts
3 of terrorism that threaten the security of U.S.
4 nationals or the national security, foreign policy or
5 economy of the United States.

6 On or about September 25, 2010, while at his
7 residence in Woodbridge, Virginia, Ahmad communicated
8 with an individual named Talha Saeed, who was in
9 Pakistan. Talha is the son of Hafiz Muhammad Saeed, the
10 leader of Lashkar-e-Tayyiba. Talha requested Ahmad to
11 prepare a video that would contain a prayer by Hafiz
12 Muhammad Saeed calling for the support of Jihad and the
13 Mujahideen. In addition, Talha instructed Ahmad to
14 present a variety of violent images on the video while
15 Hafiz Muhammad Saeed's prayer was heard in the
16 background.

17 For example, Talha directed Ahmad to begin
18 the LeT video with a number of pictures of Hafiz
19 Muhammad Saeed, then show scenes where atrocities had
20 been inflicted on Muslims, followed by the activities of
21 the Mujahideen in Kashmir. At one point Ahmad asked
22 Talha if he wanted to include an image the Mumbai attack
23 to show the power of LeT. This is a reference to LeT's
24 operation against the city of Mumbai, India, on
25 November 26, 2008, which resulted in the death over 160

1 people including six Americans.

2 Talha replied that he should not use
3 anything referring to Mumbai. Talha recommended that
4 Ahmad search for Lashkar-e-Tayyiba on YouTube to find
5 additional images of Mujahideen operations to include in
6 the video. Talha further stated that the video will be
7 popular in Pakistan and will be run continuously on
8 significant programs and during major presentations.
9 Ahmad worked on his computer throughout the day to
10 produce that video.

11 On or about September 25th, 2010, Ahmad
12 completed the LeT video and uploaded it to the YouTube
13 account Abudujjana. The next day Ahmad sent a
14 communication to another person overseas in which he
15 explained that Hafiz Muhammad Saeed son, Talha Saeed,
16 had requested him to prepare the video. He noted
17 further that it had taken him the whole day to produce
18 the video. Ahmad's construction of the LeT video was
19 confirmed by an FBI forensic examination of his
20 computer.

21 Your Honor, during this conspiracy with
22 Talha Saeed to produce and post the video Ahmad knew
23 that video would be used by LeT and had reason to
24 believe the video would be used to further and promote
25 LeT and Jihad. The actions of the defendant in forming

1 the conspiracy with Talha Saeed and producing and
2 uploading the LeT video were in all respects knowing and
3 deliberate and were not committed by accident, mistake
4 or other innocent reason.

5 THE COURT: All right.

6 Mr. Ahmad, return to the podium, please,
7 sir.

8 Was that recitation of the facts by the
9 prosecutor true and accurate in all respects?

10 THE WITNESS: Yes, sir.

11 THE COURT: All right. Mr. Ahmad, how do
12 you now plead to the charge against you in this case,
13 that is, the charge of knowingly and unlawfully,
14 willfully providing material support to a designated
15 foreign terrorist organization?

16 Do you plea guilty or not guilty.

17 THE WITNESS: Yes, I do plead guilty.

18 THE COURT: The Court in the case of the
19 United States against Jubair Ahmad finds that the
20 defendant is fully competent and capable of entering an
21 informed plea, and I find that your plea of guilty is a
22 knowing and voluntary plea. And I also find that it
23 it's supported by an independent basis in fact
24 containing each of the elements of the offense charged
25 against you. Accordingly, the Court finds -- the Court

1 adjudges you now guilty of the offense of providing
2 material support to a designated foreign terrorist
3 organization.

4 Mr. Ahmad, the Court will order the
5 preparation of a presentence investigation report. Now,
6 this is a very important document because it's the
7 document on which the Court will chiefly rely in
8 imposing an appropriate sentence.

9 And you have a role to play in its
10 preparation. You'll being asked by a probation officer
11 to provide information about your family, your
12 background, your education, work experience, your health
13 and financial conditions, your criminal history if any,
14 your version of the offense conduct and indeed anything
15 that might be material in any way to the Court's
16 sentencing decision. And you may have Ms. Ahmad and Mr.
17 Mizer with you when you provide that information to a
18 probation officer.

19 Now, when the report is completed, Mr.
20 Ahmad, you'll be furnished a copy. So will your
21 attorneys, and you'll have an opportunity to review it
22 and to reviewed it with need and then to call to the
23 Court's attention any corrections you think should be
24 made to the report or any objections you have to the
25 facts, conclusion or calculations contained in the

1 report. The government will also have an opportunity to
2 register its objections or corrections.

3 Now, if you dispute the corrections or
4 objections that the government asserts or the government
5 disputes the ones that you assert, then the Court will
6 hold a hearing, permit you to offer evidence, and to
7 cross-examine any evidence offered by the government on
8 the disputed matters. And then the court will resolve
9 the dispute by issuing findings before imposing
10 sentence.

11 Now, at the time of sentencing, Mr. Ahmad,
12 you'll have the right of allocution. That means you'll
13 have the right to addressed the Court and to say
14 anything at all you wish to the Court by way of
15 extenuation, mitigation or indeed anything you think the
16 Court should know before sentence is imposed. You won't
17 be required do address the Court, but you'll have the
18 opportunity to do so if you wish to. And, of course,
19 your attorneys or one of them will have the same
20 opportunity, that is the opportunity to address the
21 Court on your behalf.

22 I'll set sentencing for February the 24th at
23 9:00 a.m. Is that date available?

24 ATTORNEY MIZER: Your Honor, would it be
25 possible, given the nature of this case to set

1 sentencing either in April or early May?

2 THE COURT: Yes. It will be. What's the
3 reason for that?

4 ATTORNEY MIZER: Well, your Honor, there is
5 rather voluminous discovery in this case. Additionally,
6 we are expecting rather a lengthy legal arguments
7 relating to the Humanitarian Law Project last summer.
8 This is a pretty novel case, your Honor.

9 THE COURT: All right.

10 ATTORNEY MIZER: There are a number of
11 aspects that would make this different from a normal
12 case.

13 THE COURT: All right. I will permit that.
14 Let's do it then, what's the first -- what about the
15 second Friday in April? What is the second Friday in
16 April?

17 ATTORNEY MIZER: The 13th of April, your
18 Honor.

19 THE COURT: Unless you're superstitious, we
20 will set it for then.

21 ATTORNEY MIZER: That is fine with defense,
22 your Honor.

23 ATTORNEY CAMPBELL: Very well, your Honor.

24 THE COURT: All right.

25 Anything further to be accomplished in this

1 matter today?

2 ATTORNEY CAMPBELL: Not from the government,
3 your Honor.

4 THE COURT: For the defendant?

5 ATTORNEY MIZER: No, your Honor. Thank you.

6 THE COURT: All right.

7 I thank Counsel for your cooperation.

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2 CERTIFICATE
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I, MICHAEL A. RODRIQUEZ, an Official Court
Reporter for the United States District Court, in the
Eastern District of Virginia, Alexandria Division, do
hereby certify that I reported by machine shorthand, in
my official capacity, the proceedings had upon the
change of plea hearing in the case of UNITED STATES OF
AMERICA v. JUBAIR AHMAD.12
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17
I further certify that I was authorized and
did report by stenotype the proceedings in said change
of plea hearing, and that the foregoing pages, numbered
1 to 44, inclusive, constitute the official transcript
of said proceedings as taken from my machine shorthand
notes.18
19
20
IN WITNESS WHEREOF, I have hereto subscribed
my name this 17th day of June, 2012.21
22
23
24
25
/S/
Michael A. Rodriquez, RPR/CM/RMR
Official Court Reporter